

1 THE HONORABLE ROBERT S. LASNIK
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10
11 MORRIS HAIMOWITZ, Derivatively, On) No. C03-2318L
12 Behalf of CUTTER & BUCK INC.,)
13 Plaintiff,) DERIVATIVE ACTION
14 vs.) [PROPOSED] FINAL JUDGMENT AND
15 FRANCES M. CONLEY, MICHAEL S.) ORDER OF DISMISSAL WITH
16 BROWNFIELD, LARRY C. MOUNGER,) PREJUDICE
17 JAMES C. TOWNE, HARVEY N. JONES,) NOTE ON MOTION CALENDAR:
18 MARTIN J. MARKS AND STEPHEN S.) Tuesday, December 2, 2003, at 9:00 a.m.
19 LOWBER,) ORAL ARGUMENT REQUESTED
20 Defendants,)
21 - and -)
22 CUTTER & BUCK, INC., a Washington)
23 Corporation,)
24 Nominal Defendant.)
25
26



03-CV-02318-ORD

23
24
25
26
ROBBINS UMEDA & FINK, LLP
1010 Second Avenue, Suite 2360
San Diego, CA 92101
Telephone: 619/525-3990; Fax: 619/525-3991

1 This matter came before the Court for hearing pursuant to the Order of this Court, dated
2 October 3, 2003 ("Order"), on the application of the parties for approval of the settlement
3 ("Settlement") set forth in the Stipulation and Agreement of Settlement dated as of June 13, 2003 (the
4 "Stipulation"). Due and adequate notice having been given to the Current CBUK Shareholders as
5 required in said Order, and the Court having considered all papers filed and proceedings had herein
6 and otherwise being fully informed in the premises and good cause appearing therefor, IT IS
7 HEREBY ORDERED, ADJUDGED AND DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
9 capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

10 2. This Court has jurisdiction over the subject matter of the Derivative Action, including
11 all matters necessary to effectuate the Settlement, and over all parties to the Derivative Action,
12 including the Derivative Plaintiff, the Current CBUK Shareholders and the Derivative Defendants.

13 3. The Derivative Action and all Claims contained therein, as well as all of the Released
14 Derivative Claims, are dismissed with prejudice. As between Plaintiffs and Defendants, the parties are
15 to bear their own costs, except as otherwise provided in the Stipulation regarding Class Plaintiff's
16 Counsel's application for attorneys' fees and expenses.

17 4. The Court finds that the Stipulation and Settlement are fair, just, reasonable and
18 adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement
19 in all respects, and orders the Settling Parties to perform its terms to the extent the Settling Parties
20 have not already done so.

21 5. Upon the Effective Date, the Derivative Plaintiff, CBUK (as a nominal defendant in
22 the Derivative Action), and the Current CBUK Shareholders, on behalf of themselves and each of their
23 predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, assigns, representatives,
24 heirs, estates, executors, trusts, trustees, trust beneficiaries, administrators, spouses, marital
25 communities, and immediate family members, having any legal or beneficial interest in the common
26 stock or options of CBUK, shall be deemed to have, and by operation of the Judgment shall have,

1 fully, finally, and forever released, relinquished and discharged all Released Derivative Claims
2 (including all Unknown Claims), and any and all Claims relating to or arising out of or connected with
3 the Settlement or resolution of the Derivative Action, against all of the Released Derivative Persons.
4 The Non-Released Claims are unaffected by this Judgment.

5 6. The Derivative Plaintiff, CBUK (as a nominal defendant in the Derivative Action), and
6 the Current CBUK Shareholders, and each of their predecessors, successors, parents, subsidiaries,
7 affiliates, custodians, agents, assigns, representatives, heirs, estates, executors, trusts, trustees, trust
8 beneficiaries, administrators, spouses, marital communities, and immediate family members, having
9 any legal or beneficial interest in the common stock or options of CBUK, are hereby forever barred
10 and enjoined from commencing, instituting or prosecuting any of the Released Derivative Claims
11 (including all Unknown Claims), or any action or other proceeding, against any of the Released
12 Derivative Persons, based on, arising out of, related to, or in connection with, the Released Derivative
13 Claims (including all Unknown Claims).

14 7. Upon the Effective Date, each of the Released Derivative Persons shall be deemed to
15 have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and
16 discharged Derivative Plaintiff, each and all of the Current CBUK Shareholders, CBUK (as a nominal
17 defendant in the Derivative Action), and counsel to the Derivative Plaintiff from all claims (including
18 all Unknown Claims), relating to or arising out of, or connected with the institution, prosecution,
19 assertion, settlement or resolution of the Derivative Action, and/or the Released Derivative Claims,
20 except that nothing herein shall affect any agreements, claims, rights or obligations that do or may
21 hereafter exist between or among the Released Derivative Persons, or any of them.

22 8. The Court finds that the Notice of Pendency and Settlement of Derivative Action
23 ("Derivative Notice") and the Summary Notice for Publication of Settlement of Derivative Action
24 ("Summary Notice," together with the Derivative Notice, "Notice") given to Current CBUK
25 Shareholders was the best notice practicable under the circumstances, including the individual
26 Derivative Notice to all Current CBUK Shareholders who could be identified through reasonable

1 effort. Said Notice also provided the best notice practicable under the circumstances of these
 2 proceedings and of the matters set forth therein, including the proposed Settlement set forth in the
 3 Stipulation, to all Persons entitled to such notice, and said Notice fully satisfied the requirements of
 4 Federal Rule of Civil Procedure 23.1 and the requirements of due process.

5 9. Neither the Stipulation nor the Settlement contained therein, nor any act performed or
 6 document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may
 7 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released
 8 Derivative Claim, or of any wrongdoing or liability of any of the Released Derivative Persons; or (b)
 9 is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission
 10 of any of the Released Derivative Persons in any civil, criminal or administrative proceeding in any
 11 court, administrative agency or other tribunal. The Released Derivative Persons or any of them may
 12 file the Stipulation and/or the Judgment in any action that may be brought against them in order to
 13 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,
 14 good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion
 15 or similar defense or counterclaim, or in related litigation, including but not limited to, the Coverage
 16 Action, as evidence of the Settlement.

17 10. Without affecting the finality of this Judgment in any way, this Court hereby retains
 18 continuing jurisdiction over: (a) implementation of the Settlement; and (b) the Settling Parties for the
 19 purpose of construing, enforcing and administering the Stipulation and Settlement.

20 11. If the Effective Date fails to occur, then this Judgment shall be rendered null and void
 21 to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such
 22
 23
 24
 25
 26

1 event, all orders entered and releases delivered in connection herewith shall be null and void to the
2 extent provided by and in accordance with the Stipulation.

3 IT IS SO ORDERED.

4 Dated this 2nd day of December, 2003

Mr. Lasnik
5 THE HONORABLE ROBERT S. LASNIK
6 UNITED STATES DISTRICT JUDGE

7 Presented by:

8 LAW OFFICES OF KIRK R. MULFINGER
9 KIRK R. MULFINGER

10

11

KIRK R. MULFINGER

12

1020 108th Avenue N.E., Suite 215
Bellevue, WA 98004
13 Telephone: 425/454-0297
425/747-1763 (fax)

14

15

ROBBINS UMEDA & FINK, LLP
BRIAN J. ROBBINS
1010 Second Avenue, Suite 2360
16 San Diego, CA 92101
Telephone: 619/525-3990
17 619/525-3991 (fax)

18

Counsel for Derivative Plaintiff

19

20

21

22

23

24

25

26

G:\Cases-SD\Cutter&Buck\Set\DLMS86553.c-d

~~PROPOSED~~ FINAL JUDGMENT AND ORDER OF
DISMISSAL WITH PREJUDICE (C03-2318L)

ROBBINS UMEDA & FINK, LLP
1010 Second Avenue, Suite 2360
San Diego, CA 92101

Telephone: 619/525-3990;Fax: 619/525-3991

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on November 24, 2003, declarant served the [PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE by depositing a true copy thereto in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of November, 2003, at San Diego, California.

ADRIANA DEL CARMEN